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TB 22-70141

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TWINROCK HOLDINGS, LLC, a Utah
Limited Liability Company,

Plaintiff,

vs.

CITIMORTGAGE, INC., a New York
Corporation; NATIONAL DEFAULT
SERVICING CORPORATION, a foreign
corporation; BRECKENRIDGE PROPERTY
FUND 2016, LLC, a foreign Limited
Liability Company, DOES I through X,
inclusive; and ROE ENTITIES XI through
XX,

Defendants.

Case No. 2:22-cv-00143-JAD-VCF

**MOTION TO STRIKE PLAINTIFF'S
AMENDED COMPLAINT**

COMES NOW Defendant, National Default Servicing Corporation ("NDSC"), by and through its counsel, Tiffany & Bosco, P.A., and hereby files its Motion to Strike Plaintiff, Twinrock Holdings, LLC's ("Plaintiff"), Amended Complaint [ECF No. 14]. This motion is brought pursuant to Fed.R.Civ.P. 12(f), and all documents on file with the Court in this matter, and the memorandum of points and authorities that follow.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Amended Complaint should be stricken by this Court due to Plaintiff's failure to comply with Fed.R.Civ.P. 15(a). Specifically, Plaintiff was not entitled to amend pursuant to Fed.R.Civ.P. 15(a)(1), and did not seek leave to amend pursuant to Fed.R.Civ.P. 15(a)(2) before

filing the Amended Complaint. Due to this non-compliance, NDSC requests that the Amended Complaint be stricken from the docket as a rogue filing.

II. FACTUAL BACKGROUND

Plaintiff filed its Complaint on January 11, 2022, in Clark County District Court.¹ NDSC and CitiMortgage, Inc. (“CMI”) were then served with the Complaint on January 14, 2022.² NDSC subsequently filed a Declaration of Non-Monetary Status on January 26, 2022.³ Later that day, CMI removed the case to this Court.⁴ CMI subsequently filed its Motion to Dismiss on February 4, 2022.⁵ An Amended Complaint, against all Defendants, was thereafter filed on March 25, 2022.⁶ Plaintiff did not seek the consent of NDSC before filing the Amended Complaint.

III. ARGUMENT

Plaintiff’s Amended Complaint does not comply with either Fed.R.Civ.P. 15(a)(1) or (2). Rule 15(a)(1) provides that a plaintiff may amend the complaint “as a matter of course” if amendment occurs: (1) within 21 days after serving the complaint on the defendant; or (2) within 21 days after the defendant serves an answer to the complaint or motion under Fed.R.Civ.P. 12(b), 12(e), or 12(f), whichever is earlier. If amendment pursuant to Fed.R.Civ.P. 15(a)(1) is not available, a plaintiff may amend pursuant to Rule 15(a)(2) if the opposing party gives written consent or the court provides leave to amend.

In this matter, at the time Plaintiff filed its Amended Complaint on March 25, 2022, more than twenty-one days had passed since service of the Complaint on NDSC and CMI, which occurred on January 14, 2022.⁷ Additionally, Plaintiff filed the Amended Complaint more than twenty-one days after the filing of CMI’s Motion to Dismiss, which was filed on

¹ See ECF No. 1-1.

² See Affidavit of Service of NDSC, attached hereto as **Exhibit 1**.

³ See NDSC’s Declaration of Non-Monetary Status, attached hereto as **Exhibit 2**.

⁴ See ECF No. 1.

⁵ See ECF No. 4.

⁶ See ECF No. 14.

⁷ Compare Exhibit 1 and ECF No. 5 with ECF No. 14. NDSC was served with the Complaint on January 14, 2022, while the Amended Complaint was filed on March 25, 2022, a difference of 70 days.

February 4, 2022.⁸ Due to this, amending “as a matter of course” was not available to Plaintiff at the time it filed its Amended Complaint.

Further, before filing the Amended Complaint, Plaintiff did not seek the consent of NDSC and clearly did not seek leave from this Court. Plaintiff’s Amended Complaint not only added an additional party, it also asserted new causes of action against NDSC, making this rogue amendment specifically prejudicial to NDSC. This failure to comply with Fed.R.Civ.P. 15(a) means the Amended Complaint has “no legal effect.”⁹ And, as this Amended Complaint has no legal effect, it should therefore be stricken from the record.

IV. CONCLUSION

Due to the foregoing, NDSC respectfully requests that this Court strike Plaintiff’s Amended Complaint [ECF No. 14], from the record.

Respectfully submitted by:
TIFFANY & BOSCO, P.A.

/s/ Krista J. Nielson
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⁸ Compare ECF No. 4 with ECF No. 14. CMI’s Motion to Dismiss was filed on February 4, 2022, while the Amended Complaint was filed on March 25, 2022, a difference of 49 days.

⁹ *Garcia v. Las Vegas Metro. Police Dep’t*, No. 2:17-cv-02504-APG-PAL, 2019 WL 652998, at *2 (D.Nev. Feb. 15, 2019) (holding that an amended complaint filed without leave of court has no legal effect).

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT** was submitted electronically for filing and/or service with the United States District Court, District of Nevada on the 8th day of April, 2022. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows¹⁰:

THE WRIGHT LAW GROUP, P.C.

John Henry Wright, Esq.

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WOLFE & WYMAN LLP

David T. Blake, Esq.

dtblake@ww.law

I further certify that I served a copy of this document by mailing a true and correct copy, thereof, postage prepaid, addressed to:

None.

/s/ Stacey L. Grata

An Employee of Tiffany & Bosco, P.A.

¹⁰ Pursuant to EDCR Rule 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP Rule 5(b)(2)(D).

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INDEX OF EXHIBITS

- Exhibit 1:** Affidavit of Service of NDSC
- Exhibit 2:** NDSC’s Declaration of Non-Monetary Status